

EXECUTIVE CHAMBERS

HONOLULU

July 11, 2005

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1473

Honorable Members
Twenty-Third Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 1473, entitled "A Bill for an Act Relating to Waimano Ridge."

The purpose of this bill is to require the Department of Health to: (1) give at least ninety days notice to affected neighborhood boards and legislators who represent the district including the state land at Waimano ridge and obtain the approval of the Governor prior to new or expanded uses of the Waimano ridge land as a sex offender treatment facility, drug treatment facility, state laboratory, or other uses; (2) draft an updated master plan for future use of the Waimano ridge lands in consultation with the Department of Land and Natural Resources, residents of Pearl City, the Pearl City Community Association, and Pearl City Neighborhood Board No. 21; (3) conduct at least two public hearings in the Waimano ridge community to receive comments on the draft master plan; (4) incorporate, to the extent practicable, any changes or additions to the draft master plan that are submitted by the Pearl City Community Association or the Pearl City Neighborhood Board No. 21; and (5) submit the updated master plan to the Legislature at the next regular session.

Although the concerns of neighboring residents are significant, this bill is objectionable because it violates Section 5 of Article XI of the State Constitution. Section 5 of Article XI of the State Constitution provides as follows:

The legislative power over the lands owned by or under the control of the State and its political subdivisions shall be exercised only by general laws, except in

respect to transfers to or for the use of the State, or a political subdivision, or any department or agency thereof.

Section 5 of Article XI is clear that the Legislature can administer or dispose of lands owned or controlled by the State only by general law. This understanding of the plain meaning of Section 5 is supported by Section 5's constitutional history. See Stand. Comm. Rep. No. 78, 1 Proceedings of the Constitutional Convention of Hawaii 1950 ("1 Proceedings") at 233 (1960). The only exception to Section 5's requirement that the Legislature administer or dispose of lands owned or controlled by the State by general law is for intergovernmental transfers of land. See 1 Proceedings at 233; 2 Proceedings of the Constitutional Convention of Hawaii 1950 at 631 (1961).

The session law to be enacted by this bill is not a general law that applies to all state lands, but instead is drafted to specifically apply only to the Waimano ridge area by requiring notice to the local neighborhood boards and legislators and approval of the Governor prior to new or expanded uses of the Waimano ridge land as a sex offender treatment facility, drug treatment facility, state laboratory, or any other uses. Nor does this bill transfer the Waimano ridge lands to or for the use of the State or an agency of the State. Accordingly, because provisions of this bill will not be a general law for the management of natural resources, this bill violates Section 5 of Article XI of the State Constitution.

Moreover, under our State's constitutional system of three separate but equal branches of government, the authority to find new or expanded uses or to conduct further development on the Waimano ridge area is an executive branch responsibility. Section 2 of Article XI of the State Constitution expressly requires that the management and disposition of natural resources be vested in "executive" boards or commissions.

STATEMENT OF OBJECTIONS
SENATE BILL NO. 1473
Page 3

For the foregoing reasons, I am returning Senate Bill
No. 1473 without my approval.

Respectfully,

LINDA LINGLE
Governor of Hawaii